

REMARKS

The non-final Office Action mailed April 4, 2007 has been received and reviewed. Claims 1, 2 and 4-22 are pending. Claims 1, 2, and 18-22 are rejected. Claims 5-17 are allowed. Claim 4 is objected to, but otherwise determined to be allowable if rewritten; Claim 4 is consequently rewritten into independent form. Claims 1 and 20-22 are amended. Claims 18 and 19 are cancelled. The Applicant submits that the claims distinguish over the cited references and are in condition for allowance for the reasons stated below.

Rejection Of Claims 1, 2, And 18-22 Under 35 U.S.C. § 103(a)

Claims 1, 2, and 18-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Paterson (WO 94/00082) in view of Eisenberg (DE 4013693). The Examiner states that Paterson discloses an orthopedic brace providing active resistance to axial rotation and translation in a joint comprising at least one circumferentially spiraling bracing member as claimed, but that Paterson does not specify that the spiraling bracing member is length-adjustable. The Examiner states, without identifying specific structure, that Eisenberg discloses a bracing member in an orthopedic brace that is length-adjustable to provide an accurate fit to the desired user. The rejection of claims 18 and 19 is rendered moot by cancellation of those claims. The rejection is overcome with respect to the remaining rejected claims by clarifying amendment of claims 1, and 20-22.

As amended, claims 1, 2 and 20-22 require an orthopedic brace having a length adjustment device positioned between the proximal and distal ends of the circumferentially spiraling bracing member to provide increased resistance to axial rotation and translation in the joint when the proximal end and distal ends of the circumferentially spiraling bracing member are fixed in position relative to each other. As noted by the Examiner, Paterson does not teach length-adjustability in a spiraling bracing member. While the Examiner states that Eisenberg does teach length adjustability, no specific structures in Eisenberg are pointed out by the Examiner to show that Eisenberg discloses such length adjustability. The Applicant can only assume that it is argued by the Examiner that the strap (21) of Eisenberg is the structure which is considered by the Examiner to be equivalent to a circumferentially spiraling member. The Applicant submits that it is not equivalent for the reasons stated below.

The length-adjustability of the Eisenberg strap (21) is effected by pulling on the free end of the strap (denoted A in the attached drawing) which is movably or slidably looped through a cross slit B in the splints (5 or 6). Adjustment of the length of the strap (21) causes the pivotally joined splints at the side of the knee to rotate relative to each other to reduce the angle of the knee.¹ The Eisenberg device is, consequently, a wholly different device from the present invention because the Eisenberg device is specifically directed to dictating the angle of the knee and not to limiting or resisting the axial rotation

¹ The description of Eisenberg at column 2, lines 57-62, states "On the upper and lower free ends of the outer (Fig. 2) or inner (Fig. 3) splints 5 and 6, respectively, a lengthwise-adjustable strap 21 leads through a cross-slit, the strap 21 being applied in a figure-8loop on the inside or outside of the knee in order to enlarge or reduce the angle of the knee."

in the knee.

The length adjustability in the Eisenberg device is not effected between fixed proximal and distal ends of a circumferentially spiraling member as claimed, but is merely effected by sliding the non-fixed ends of the strap 21 through cross slits (B). The resulting adjustability of the strap (21) in the Eisenberg device dictates a rotation in the radial/medial axis of the joint (i.e., normal to the axial or longitudinal axis of the joint). The device of Eisenberg does not, therefore, operate to increase resistance in axial rotation and translation in the joint as required by the present claims. Therefore, even if Eisenberg were combinable with Paterson, the combination of the two references does not provide the claimed structure and function of amended claims 1, 2 and 20-22. More significantly, however, nothing in either Paterson or Eisenberg teaches or suggests delimiting axial rotation and translation in a joint or increasing resistance to axial rotation in a joint by providing length adjustment between fixed proximal and distal ends in a circumferentially spiraling bracing member as claimed. Claims 1, 2 and 20-22 are not obviated by the references.

Rejection Of Claim 22 Under Obviousness-Type Double Patenting

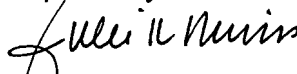
Claim 22 is rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 4 of U.S. Patent No. 6,142,965. The rejection is again traversed. Claim 22 presents a patentably distinct invention from claims 1, 3 and 4 of the '965 patent by requiring a length-adjusting circumferentially

spiraling bracing member having a length adjustment device positioned between proximal and distal ends of the circumferentially spiraling bracing member to effect increased resistance to axial rotation and translation in the joint. Nothing in the disclosure of the '965 patent remotely suggests length-adjustability of the circumferentially spiraling member or, more importantly, length-adjustability as a means of increasing resistance to axial rotation in the joint to which the brace is applied. Claim 22 is not obviated by any of the claims of the '965 patent. Withdrawal of the obviousness-type double-patenting rejection against claim 22 is respectfully requested.

CONCLUSION

The Applicant submits that the claims present patentable subject matter. Reconsideration and allowance are requested. Should the Examiner have further questions or issues, particularly regarding the structure and operation of the invention, the Applicant requests that the Examiner contact the undersigned by telephone to discuss the matter further.

Respectfully submitted,



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Attachment: Marked Figures 1 and 3 of Eisenberg